

REMARKS

This Amendment is responsive to the Office Action dated April 22, 2003 (effective date reset to October 20, 2003). Claims 1-39 were pending in the application. In the Office Action, claims 11-15 were allowed and claims 1-10 and 16-39 were rejected. In this Amendment, claims 1, 6, 16, 21, 26, 31, 36 and 38 have been amended. Claims 1-10 and 16-39 thus remain for consideration

Applicants submit that claims 1-10 and 16-39 are now in condition for allowance and request reconsideration and withdrawal of the rejections in light of the following remarks.

§103 Rejections

Claims 1-10 and 16-39 were rejected under 35 U.S.C. §103(a) as being unpatentable over Matsuura et al. (U.S. Patent No. 5,956,426).

Applicants respectfully submit that independent claims 1, 6, 16, 21, 26, 31, 36 and 38 are patentable over Matsuura. Applicants' invention as recited in independent claims 1, 6, 16, 21, 26, 31, 36 and 38 is directed toward a data multiplexing device and method. Each of the claims recites that data is encoded and that target rates for the encoding are computed based on "encoding difficulty per unit time of at least one program's worth of data." Matsuura does not disclose computing target rates for encoding based on "encoding difficulty per unit time of at least one program's worth of data." Accordingly, Applicants believe that claims 1, 6, 16, 21, 26, 31, 36 and 38 are patentable over Matsuura on at least this basis.

Claims 2-5 depend on claim 1. Since claim 1 is believed to be patentable over Matsuura, claims 2-5 are believed to be patentable over Matsuura based at least on their dependency on claim 1.

Claims 7-10 depend on claim 6. Since claim 6 is believed to be patentable over Matsuura, claims 7-10 are believed to be patentable over Matsuura based at least on their dependency on claim 6.

Claims 17-20 depend on claim 16. Since claim 16 is believed to be patentable over Matsuura, claims 17-20 are believed to be patentable over Matsuura based at least on their dependency on claim 16.

Claims 22-25 depend on claim 21. Since claim 21 is believed to be patentable over Matsuura, claims 22-25 are believed to be patentable over Matsuura based at least on their dependency on claim 21.

Claims 27-30 depend on claim 26. Since claim 26 is believed to be patentable over Matsuura, claims 27-30 are believed to be patentable over Matsuura based at least on their dependency on claim 26.

Claims 32-35 depend on claim 31. Since claim 31 is believed to be patentable over Matsuura, claims 32-35 are believed to be patentable over Matsuura based at least on their dependency on claim 31.

Claim 37 depends on claim 36. Since claim 36 is believed to be patentable over Matsuura, claim 37 is believed to be patentable over Matsuura based at least on its dependency on claim 36.

Claim 39 depends on claim 38. Since claim 38 is believed to be patentable over Matsuura, claim 39 is believed to be patentable over Matsuura based at least on its dependency on claim 38.

Applicants respectfully submit that all of the claims now pending in the application are in condition for allowance, which action is earnestly solicited.

It is submitted that these claims, as originally presented, are patentably distinct over the prior art cited by the Examiner, and that these claims were in full compliance with the requirements of 35 U.S.C. §112. Changes to these claims, as presented herein, are not made for the purpose of patentability within the meaning of 35 U.S.C. §§101, 102, 103 or 112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

Statements appearing above with respect to the disclosures in the cited references represent the present opinions of the Applicants' undersigned attorney and, in the event that the Examiner disagrees with any such opinions, it is respectfully requested that the Examiner specifically indicate those portions of the respective reference providing the basis for a contrary view.

If any issues remain, or if the Examiner has any further suggestions, he/she is invited to call the undersigned at the telephone number provided below.

The Examiner is hereby authorized to charge any insufficient fees or credit any overpayment associated with the above-identified application to Deposit Account No. 50-0320.

The Examiner's consideration of this matter is gratefully acknowledged.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By:



Bruno Polito
Reg. No. 38,580
(212) 588-0800